

COPY

FILED

2011 SEP 14 PM 12:48
FEDERAL U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

1 CHAPIN FITZGERALD SULLIVAN & BOTTINI LLP
2 Kenneth M. Fitzgerald, Esq. (SBN: 142505)
3 kfitzgerald@cfsblaw.com
4 Curtis G. Carll, Esq. (SBN: 248470)
5 ccarll@cfsblaw.com
6 550 West "C" Street, Suite 2000
7 San Diego, California 92101
8 Tel: (619) 241-4810
9 Fax: (619) 955-5318

10 Attorneys for Defendant
11 Todd M. Lane

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 National Credit Union
15 Administration Board, as Liquidating
16 Agent for Western Corporate Federal
17 Credit Union,

18 Plaintiff,

19 vs.

20 Robert A. Siravo, Todd M. Lane,
21 Robert J. Burrell, Thomas E.
22 Swedberg, Timothy T. Sidley,
23 Robert H. Harvey, Jr., William
24 Cheney, Gordon Dames, James P.
25 Jordan, Timothy Kramer, Robin J.
26 Lentz, John M. Merlo, Warren
27 Nakamura, Brian Osberg, David
28 Rhamy and Sharon Updike,

Defendants.

) Case No.: CV10-01597 GW (MANx)
)
) **Amended Answer and Counterclaims**
) **of Defendant Todd M. Lane to**
) **Second Amended Complaint**

) Jury Trial Demanded

) Honorable George H. Wu
) Courtroom: 10

1 **Todd M. Lane,**

2
3 Counter-Claimant,

4 vs.

5 **National Credit Union**
6 **Administration Board, as Liquidating**
7 *Agent for Western Corporate Federal*
8 *Credit Union,*

9 Counter-Defendant.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Defendant Todd M. Lane (“Lane”) answers the numbered allegations in
2 and provides affirmative defenses to the Second Amended Complaint of Plaintiff
3 National Credit Union Administration Board as Liquidating Agent for Western
4 Corporate Federal Credit Union (“Plaintiff”), Doc. 116, filed February 22, 2011.

5 Except where expressly admitted, Lane denies all the allegations in the
6 Second Amended Complaint.

7 **Jurisdiction and Venue**

8 1. Lane admits that WesCorp was a credit union with its corporate
9 offices located in San Dimas, California, that WesCorp was placed into
10 conservatorship by the NCUA Board on March 19, 2009, and that WesCorp was
11 placed into involuntary liquidation on October 1, 2010. The remainder of
12 Paragraph 1 contains legal conclusions, to which no response is required.

13 2. Paragraph 2 contains legal conclusions, to which no response is
14 required. To the extent the allegations require a response, they are denied.

15 3. Paragraph 3 contains legal conclusions, to which no response is
16 required. To the extent the allegations require a response, they are denied.

17 4. Paragraph 4 contains legal conclusions, to which no response is
18 required. To the extent the allegations require a response, they are denied.

19 5. Paragraph 5 contains legal conclusions, to which no response is
20 required. To the extent the allegations require a response, they are denied.

21 6. Lane admits that the NCUA is the liquidating agent for WesCorp.

22 7. Lane admits that Robert A. Siravo (“Siravo”) was the President and
23 CEO of WesCorp from May 1, 2002 to or about March 20, 2009, and that he is
24 a resident of California. Lane denies the remaining allegations of Paragraph 7.

25 8. Lane admits the allegations of Paragraph 8.

26 9. Lane admits that Robert J. Burrell (“Burrell”) served as Executive Vice
27 President and as the Chief Investment Officer for WesCorp. Lane lacks
28

1 knowledge or information sufficient to form a belief as to the truth of the
2 remaining allegations of Paragraph 9 and on that basis denies those allegations.

3 10. Lane admits that Timothy T. Sidley (“Sidley”) served as Vice
4 President for Risk Assessment and as Chief Risk Officer in charge of investment
5 credit services. Lane lacks knowledge or information sufficient to form a belief as
6 to the truth of the remaining allegations of Paragraph 10 and on that basis denies
7 those allegations.

8 11. Lane admits that Thomas E. Swedberg (“Swedberg”) was Vice
9 President of Human Resources and Vice President of Strategic Planning and
10 Organizational Development. Lane lacks knowledge or information sufficient to
11 form a belief as to the truth of the remaining allegations of Paragraph 11 and on
12 that basis denies those allegations.

13 12. Lane admits that Robert H. Harvey, Jr. (“Harvey”) was a director and
14 the Chairman of the WesCorp board of directors, and that he is a resident of the
15 state of Washington. Lane lacks knowledge or information sufficient to form a
16 belief as to the truth of the remaining allegations of Paragraph 12 and on that
17 basis denies those allegations.

18 13. Lane admits that James P. Jordan (“Jordan”) was a member of the
19 WesCorp board of directors and was the Vice Chairman of the WesCorp board.
20 Lane lacks knowledge or information sufficient to form a belief as to the truth of
21 the remaining allegations of Paragraph 13 and on that basis denies those
22 allegations.

23 14. Lane admits that Timothy Kramer (“Kramer”) was a member of the
24 WesCorp board of directors and served as the Secretary and Treasurer of the
25 WesCorp board. Lane lacks knowledge or information sufficient to form a belief
26 as to the truth of the remaining allegations of Paragraph 14 and on that basis
27 denies those allegations.
28

1 15. Lane admits that Robin J. Lentz (“Lentz”) was a member of the
2 WesCorp board of directors. Lane lacks knowledge or information sufficient to
3 form a belief as to the truth of the remaining allegations of Paragraph 15 and on
4 that basis denies those allegations.

5 16. Lane admits that John M. Merlo (“Merlo”) was a member of the
6 WesCorp board of directors and that he is a resident of California. Lane lacks
7 knowledge or information sufficient to form a belief as to the truth of the
8 remaining allegations of Paragraph 16 and on that basis denies those allegations.

9 17. Lane admits that Gordon Dames (“Dames”) was a member of the
10 WesCorp board of directors. Lane lacks knowledge or information sufficient to
11 form a belief as to the truth of the remaining allegations of Paragraph 17 and on
12 that basis denies those allegations.

13 18. Lane admits that William Cheney (“Cheney”) was a member of the
14 WesCorp board of directors. Lane lacks knowledge or information sufficient to
15 form a belief as to the truth of the remaining allegations of Paragraph 18 and on
16 that basis denies those allegations.

17 19. Lane admits that Warren Nakamura (“Nakamura”) was a member of
18 the WesCorp board of directors. Lane lacks knowledge or information sufficient
19 to form a belief as to the truth of the remaining allegations of Paragraph 19 and
20 on that basis denies those allegations.

21 20. Lane admits that Brian Osberg (“Osberg”) was a member of the
22 WesCorp board of directors. Lane lacks knowledge or information sufficient to
23 form a belief as to the truth of the remaining allegations of Paragraph 20 and on
24 that basis denies those allegations.

25 21. Lane admits that David Rhamy (“Rhamy”) was a member of the
26 WesCorp board of directors. Lane lacks knowledge or information sufficient to
27 form a belief as to the truth of the remaining allegations of Paragraph 21 and on
28 that basis denies those allegations.

1 22. Lane admits that Sharon Updike (“Updike”) was a member of the
2 WesCorp board of directors. Lane lacks knowledge or information sufficient to
3 form a belief as to the truth of the remaining allegations of Paragraph 22 and on
4 that basis denies those allegations.

5 23. Lane admits the allegations of Paragraph 23.

6 24. Lane admits that WesCorp’s Asset and Liability Committee
7 (“ALCO”) had oversight responsibility for WesCorp’s asset liability management
8 process, including investments. Lane lacks knowledge or information sufficient
9 to form a belief as to the truth of the remaining allegations of Paragraph 24 and
10 on that basis denies those allegations, except to the extent they reference the
11 contents of WesCorp’s corporate policies, which speak for themselves. Lane
12 refers to WesCorp’s corporate policies for their contents and denies any
13 characterization inconsistent with their terms.

14 25. Lane lacks knowledge or information sufficient to form a belief as to
15 the truth of the allegations of Paragraph 25 and on that basis denies those
16 allegations.

17 26. Lane admits that board members attended ALCO meetings and
18 received ALCO materials along with their monthly board packages. Lane lacks
19 knowledge or information sufficient to form a belief as to the truth of the
20 remaining allegations of Paragraph 26 and on that basis denies those allegations.

21 27. Lane admits that WesCorp’s budget was reviewed by the budget
22 committee, which recommended it before it was approved by the board. Lane
23 lacks knowledge or information sufficient to form a belief as to the truth of the
24 remaining allegations of Paragraph 27 and on that basis denies those allegations.

25 28. Paragraph 28 contains legal conclusions, to which no response is
26 required. To the extent the allegations require a response, they are denied.

27 29. Paragraph 29 contains legal conclusions, to which no response is
28 required.

Summary of Claims

30. Lane admits that WesCorp was a non-profit corporate credit union, that its members were credit unions, and that it provided its members with banking and investment services for their funds. The remaining allegations of Paragraph 30 contain legal conclusions, to which no response is required. To the extent the remaining allegations require a response, they are denied.

31. Lane admits that WesCorp was a leading corporate federal credit union and provided its members with banking and investment services for their funds. Lane also admits that Siravo became President and CEO of WesCorp in 2002. Lane denies the remaining allegations of Paragraph 31.

32. Lane admits that WesCorp invested its members' funds and borrowed funds in securities, including private label mortgage backed securities ("MBS"), including MBS that were not guaranteed by the United States or its agencies. Lane denies the remaining allegations of Paragraph 32.

33. Lane lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 33 and on that basis denies them.

34. Lane admits that WesCorp used income from its investments to pay operating expenses. Lane lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 34 and on that basis denies those allegations.

35. Lane denies the allegations of Paragraph 35.

36. Lane admits that WesCorp invested in MBS, including MBS based on reduced-documentation Option ARM loans. Lane lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 36 and on that basis denies those allegations.

37. Lane denies the allegations of Paragraph 37.

38. Lane admits that WesCorp invested in MBS, including MBS based on reduced documentation Option ARM loans. Lane lacks knowledge or

1 information sufficient to form a belief as to the remaining allegations of
2 Paragraph 38 and on that basis denies those allegations.

3 39. Lane admits that WesCorp purchased AAA-rated and AA-rated
4 MBS that were underwritten by the world's leading investment banks and denies
5 the remaining allegations of Paragraph 39.

6 40. Lane lacks knowledge or information to form a belief as to the truth
7 of the allegations of Paragraph 40, and on that basis denies them, except to the
8 extent they reference the contents of WesCorp's 2009 financial statements, which
9 speak for themselves. Lane refers to WesCorp's 2009 financial statements for
10 their contents and denies any characterization inconsistent with their terms.

11 41. Lane lacks knowledge or information sufficient to form a belief as to
12 the truth of the allegations of Paragraph 41, and on that basis denies those
13 allegations.

14 42. Lane admits that he and Siravo executed an agreement, which speaks
15 for itself. Lane refers to the agreement for its contents and denies any
16 characterization inconsistent with its terms. Lane lacks knowledge or
17 information to form a belief as to the truth of the remaining allegations of
18 Paragraph 42, and on that basis denies those allegations.

19 43. Lane denies the allegations of Paragraph 43.

20 **Factual Allegations**

21 **The Federal Credit Union System**

22 44. Lane admits that the federal credit union system is a three-tier system
23 consisting of (1) one wholesale corporate credit union (U.S. Central Federal
24 Credit Union); (2) retail corporate credit unions; and (3) "natural person" credit
25 unions. Lane further admits that the wholesale corporate credit union provides
26 services to the retail corporate credit unions, while the retail corporate credit
27 unions provide services to both federally-chartered and state-chartered natural
28 person credit unions. Lane lacks knowledge or information sufficient to form a

1 belief as to the truth of the remaining allegations of Paragraph 44 and on that
2 basis denies those allegations.

3 45. Lane admits that WesCorp was a retail corporate credit union. Lane
4 lacks knowledge or information sufficient to form a belief as to the truth of the
5 remaining allegations of Paragraph 45 and on that basis denies those allegations.

6 46. Lane admits the allegations of Paragraph 46.

7 47. Lane admits that retail corporate credit unions provide services and
8 support to their natural person credit union members. Lane admits that retail
9 corporate credit unions offer their natural person credit unions banking and
10 investment services for their funds, and that these services may include settlement
11 of transactions such as checks, ATM and credit card transactions and wire
12 transfers, and that they allow their members to borrow funds. Lane lacks
13 knowledge or information sufficient to form a belief as to the truth of the
14 remaining allegations of Paragraph 47 and on that basis denies those allegations.

15 48. Lane lacks knowledge or information sufficient to form a belief as to
16 the truth of the allegations of Paragraph 48 and on that basis denies them, except
17 to the extent they reference the contents of WesCorp's website, which speaks for
18 itself. Lane refers to WesCorp's website for its contents and denies any
19 characterization inconsistent with its terms.

20 49. Lane admits that WesCorp had by-laws, which speak for themselves.
21 Lane refers to WesCorp's bylaws for their contents and denies any
22 characterization inconsistent with their terms.

23 50. Lane lacks knowledge or information sufficient to form a belief as to
24 the truth of the allegations of Paragraph 50 and on that basis denies them.

25 51. Lane admits the allegations of Paragraph 51.

26 **The Officer Defendants' Responsibilities and Duties**

27 52. Lane lacks knowledge or information sufficient to form a belief as to
28 the truth of the allegations of Paragraph 52 and on that basis denies those

1 allegations, except to the extent the allegations reference the contents of
2 WesCorp's by-laws and corporate policies, which speak for themselves. Lane
3 refers to WesCorp's by-laws and corporate policies for their contents and denies
4 any characterization inconsistent with their terms.

5 53. Lane admits that Siravo served as President and CEO of WesCorp,
6 and that he had responsibilities for overseeing WesCorp's operations and
7 investments. Lane denies the remaining allegations of Paragraph 53.

8 54. Lane admits that Siravo served as President and CEO of WesCorp.
9 The remaining allegations of Paragraph 54 contain legal conclusions, to which no
10 response is required. To the extent that a response is required, they are denied.

11 55. Lane admits that he served as Chief Financial Officer of WesCorp
12 and had responsibilities for WesCorp's financial statements, financial operations,
13 and budgets. Lane denies the remaining allegations of Paragraph 55.

14 56. Lane admits that Burrell served as Chief Investment Officer for
15 WesCorp and had responsibilities for WesCorp's investments and for supervising
16 WesCorp's Investment Department. Lane lacks knowledge or information
17 sufficient to form a belief as to the truth of the remaining allegations of Paragraph
18 56 and on that basis denies those allegations.

19 57. Lane denies the allegations of Paragraph 57.

20 58. Lane admits that Sidley served as Vice President of Risk Assessment,
21 and that the Director of Investment Credit Services reported to Sidley. Lane
22 further admits that Sidley had responsibilities with respect to WesCorp's
23 investment credit policies and procedures. Lane lacks knowledge or information
24 sufficient to form a belief as to the truth of the remaining allegations of Paragraph
25 58 and on that basis denies those allegations.

26 59. Lane denies that the Asset/Liability Staff Committee ("ALCS") had
27 the responsibilities as described in Paragraph 59. Lane lacks knowledge or
28

1 information sufficient to form a belief as to the truth of the remaining allegations
2 of Paragraph 59 and on that basis denies those allegations.

3 60. Lane admits that Siravo, Burrell and Lane served as voting members
4 of ALCO and ALSC, and that Sidley served as a non-voting member of ALSC
5 and a staff liaison to ALCO. Lane denies the remaining allegations of Paragraph
6 60.

7 **WesCorp's Era of Growth**

8 61. Lane lacks knowledge or information sufficient to form a belief as to
9 the truth of the allegations of Paragraph 61 and on that basis denies them.

10 62. Lane admits that Sirvo became President and CEO of WesCorp in
11 2002. Lane lacks knowledge or information sufficient to form a belief as to the
12 remaining allegations of Paragraph 62 and on that basis denies those allegations.

13 63. Lane lacks knowledge or information sufficient to form a belief as to
14 the truth of the allegations of Paragraph 63 and on that basis denies them.

15 64. Lane lacks knowledge or information sufficient to form a belief as to
16 the truth of the allegations of Paragraph 64 and on that basis denies them.

17 65. Lane lacks knowledge or information sufficient to form a belief as to
18 the truth of the allegations of Paragraph 65 and on that basis denies them.

19 66. Lane lacks knowledge or information sufficient to form a belief as to
20 the truth of the allegations of Paragraph 66 and on that basis denies them.

21 67. Lane admits that WesCorp invested in MBS, including private label
22 MBS that had higher yields than MBS issued by government agencies. Lane
23 lacks knowledge or information sufficient to form a belief as to the truth of the
24 remaining allegations of Paragraph 67 and on that basis denies those allegations.

25 68. Lane lacks knowledge or information sufficient to form a belief as to
26 the truth of the allegations of Paragraph 68 and on that basis denies them, except
27 to the extent the allegations reference the contents of WesCorp's corporate
28

1 policies, which speak for themselves. Lane refers to WesCorp's corporate policies
2 for their contents and denies any characterization inconsistent with their terms.

3 69. Lane lacks knowledge or information sufficient to form a belief as to
4 the truth of the allegations of Paragraph 69 and on that basis denies them.

5 70. Lane admits that his compensation and the compensation of other
6 WesCorp executives increased from 2002 to 2008, but lacks knowledge or
7 information sufficient to form a belief as to the truth of the remaining allegations
8 of Paragraph 70 and on that basis denies those allegations.

9 **WesCorp's Private Label MBS Investments**

10 71. Lane lacks knowledge or information sufficient to form a belief as to
11 the truth of the allegations of Paragraph 71 and on that basis denies them.

12 72. Lane lacks knowledge or information sufficient to form a belief as to
13 the truth of the allegations of Paragraph 72 and on that basis denies them.

14 73. Lane admits that WesCorp invested in AAA-rated and AA-rated
15 private label MBS. Lane lacks knowledge or information sufficient to form a
16 belief as to the truth of the remaining allegations of Paragraph 73 and on that
17 basis denies those allegations, except to the extent the allegations reference the
18 contents of the NCUA's regulations and WesCorp's investment policies, which
19 speak for themselves. Lane refers to the NCUA's regulations and WesCorp's
20 investment policies for their contents and denies any characterization inconsistent
21 with their terms.

22 74. Lane admits that between 2004 and 2007 WesCorp invested in MBS,
23 including Collateralized Debt Obligations ("CDOs") and Option ARM MBS.
24 Lane lacks knowledge or information sufficient to form a belief as to the truth of
25 the remaining allegations of Paragraph 74 and on that basis denies those
26 allegations.

27 75. Lane admits that MBS are shares in a pool of mortgages and CDOs
28 are shares in a pool of MBS. Lane also admits that there are risks associated with

1 investments in CDOs. Lane lacks knowledge or information sufficient to form a
2 belief as to the truth of the remaining allegations of Paragraph 75 and on that
3 basis denies those allegations

4 76. Lane admits that WesCorp purchased CDOs. Lane lacks knowledge
5 or information sufficient to form a belief as to the truth of the remaining
6 allegations of Paragraph 76 and on that basis denies those allegations.

7 77. Lane admits that Option ARM MBS are investments in Option
8 ARM mortgages, and that Option ARM mortgages have payment terms and can
9 have a negative amortization. Lane lacks knowledge or information sufficient to
10 form a belief as to the remaining allegations of Paragraph 77 and on that basis
11 denies those allegations.

12 78. Lane lacks knowledge or information sufficient to form a belief as to
13 the truth of the allegations of Paragraph 78 and on that basis denies them.

14 79. Lane lacks knowledge or information sufficient to form a belief as to
15 the truth of the allegations of Paragraph 79 and on that basis denies them.

16 80. Lane admits that WesCorp invested in Option ARM MBS, including
17 Option ARM MBS that included reduced-documentation Option ARM loans.
18 Lane lacks knowledge or information sufficient to form a belief as to the truth of
19 the remaining allegations of Paragraph 80 and on that basis denies those
20 allegations.

21 81. Lane admits that MBS investments were sold in tranches and that
22 WesCorp invested in some AAA-rated and AA-rated MBS that paid a higher
23 yield than other AAA-rated and AA-rated MBS. Lane lacks knowledge or
24 information sufficient to form a belief as to the truth of the allegations of
25 Paragraph 81 and on that basis denies those allegations.

26 82. Lane admits that WesCorp invested in AA-rated MBS. Lane lacks
27 knowledge or information sufficient to form a belief as to the truth of the
28 remaining allegations of Paragraph 82 and on that basis denies those allegations.

1 83. Lane lacks knowledge or information sufficient to form a belief as to
2 the truth of the allegations of Paragraph 83 and on that basis denies them.

3 84. Lane admits that WesCorp invested in AAA-rated Option ARM
4 MBS. Lane lacks knowledge or information sufficient to form a belief as to the
5 truth of the remaining allegations of Paragraph 84 and on that basis denies those
6 allegations.

7 **WesCorp's Budgets**

8 85. Lane admits the allegations of Paragraph 85.

9 86. Paragraph 86 contains legal conclusions, to which no response is
10 required. To the extent the allegations require a response, they are denied.

11 87. Paragraph 87 contains legal conclusions, to which no response is
12 required. To the extent the allegations require a response, Lane lacks knowledge
13 or information sufficient to form a belief as to the truth of the allegations of
14 Paragraph 87 and on that basis denies them.

15 88. The allegations of Paragraph 88 reference the contents of WesCorp's
16 budgets and an executive summary, which speak for themselves. Lane refers to
17 WesCorp's budgets and the executive summary for their contents and denies any
18 characterization inconsistent with their terms. To the extent that the allegations
19 of Paragraph 88 refer to facts beyond those documents, Lane denies them.

20 89. Lane denies the allegations of Paragraph 89.

21 90. Lane admits that when he was WesCorp's CFO, WesCorp's
22 management proposed budgets that were considered and recommended by the
23 Budget Committee and adopted by WesCorp's Board of Directors, and that he
24 worked on the budgets with Siravo and Burrell. Lane lacks knowledge or
25 information sufficient to form a belief as to the truth of the remaining allegations
26 of Paragraph 90 and on that basis denies those allegations, except to the extent
27 the allegations reference the contents of WesCorp's budgets, which speak for
28

1 themselves. Lane refers to WesCorp's budgets for their contents and denies any
2 characterization inconsistent with their terms.

3 91. Lane denies the allegations of Paragraph 91.

4 92. Lane lacks knowledge or information sufficient to form a belief as to
5 the truth of the allegations of Paragraph 92 and on that basis denies them.

6 93. Lane lacks knowledge or information sufficient to form a belief as to
7 the truth of the allegations of Paragraph 93 and on that basis denies them.

8 94. Lane lacks knowledge or information sufficient to form a belief as to
9 the truth of the allegations of Paragraph 94, and on that basis denies them, except
10 to the extent they reference the contents of WesCorp's budgets, which speak for
11 themselves. Lane refers to WesCorp's budgets for their contents and denies any
12 characterization inconsistent with their terms.

13 95. The allegations of Paragraph 95 reference the contents of materials
14 supplied to the Budget Committee about budgets, which speak for themselves.
15 Lane refers to these materials for their contents and denies any characterization
16 inconsistent with their terms. To the extent that the allegations of Paragraph 95
17 go beyond those documents, Lane lacks knowledge or information sufficient to
18 form a belief as to the truth of the allegations of Paragraph 95, and on that basis
19 denies them.

20 96. Lane admits that directors attended ALCO meetings. Lane lacks
21 knowledge or information sufficient to form a belief as to the truth of the
22 remaining allegations of Paragraph 96 and on that basis denies them.

23 97. Lane lacks knowledge or information sufficient to form a belief as to
24 the truth of the allegations of Paragraph 97 and on that basis denies them, except
25 to the extent they reference the contents of WesCorp's ALCO books, which
26 speak for themselves. Lane refers to WesCorp's ALCO books for their contents
27 and denies any characterization inconsistent with their terms.

28

1 98. Lane lacks knowledge or information sufficient to form a belief as to
2 the truth of the allegations of Paragraph 98 and on that basis denies them.

3 99. Lane lacks knowledge or information sufficient to form a belief as to
4 the truth of the allegations of Paragraph 99 and on that basis denies them.

5 100. Paragraph 100 contains legal conclusions, to which no response is
6 required. To the extent the allegations require a response, they are denied.

7 101. Paragraph 101 contains legal conclusions, to which no response is
8 required. To the extent the allegations require a response, they are denied.

9 102. Lane denies the allegations of Paragraph 102.

10 103. Lane denies the allegations of Paragraph 103.

11 104. Lane denies the allegations of Paragraph 104.

12 **MBS Concentration Risk**

13 105. Lane lacks knowledge or information sufficient to form a belief as to
14 the truth of the allegations of Paragraph 105 and on that basis denies them,
15 except to the extent they reference the contents of the NCUA's regulations,
16 which speak for themselves. Lane refers to the NCUA's regulations for their
17 contents and denies any characterization inconsistent with their terms.

18 106. Lane lacks knowledge or information sufficient to form a belief as to
19 the truth of the allegations of Paragraph 106 and on that basis denies them.

20 107. Lane admits that WesCorp provided services to its members and
21 invested their funds. Lane lacks knowledge or information sufficient to form a
22 belief as to the truth of the remaining allegations of Paragraph 107 and on that
23 basis denies those allegations.

24 108. Lane admits that WesCorp's Board of Directors was responsible for
25 setting investment policies. Lane lacks knowledge or information sufficient to
26 form a belief as to the truth of the remaining allegations of Paragraph 108 and on
27 that basis denies those allegations, except to the extent they reference the contents
28 of WesCorp's corporate and investment policies, which speak for themselves.

1 Lane refers to WesCorp's corporate and investment policies for their contents and
2 denies any characterization inconsistent with their terms.

3 109. Lane admits that the ALCO had responsibilities for reviewing
4 WesCorp's investments. Lane lacks knowledge or information sufficient to form
5 a belief as to the truth of the remaining allegations of Paragraph 109 and on that
6 basis denies those allegations.

7 110. Lane admits that Sidley headed WesCorp's Risk Assessment
8 Department and Burrell headed the Investment Department and that these two
9 departments were responsible for investment concentration limits and
10 diversification of investments. Lane denies the remaining allegations of
11 Paragraph 110.

12 111. Lane admits that WesCorp's board adopted policies regarding its
13 investment securities, which corporate policies speak for themselves, and that
14 from time to time it amended its policies. Lane refers to WesCorp's corporate
15 policies for their contents and denies any characterization inconsistent with their
16 terms. Lane lacks knowledge or information sufficient to form a belief as to the
17 truth of the remaining allegations of Paragraph 111 and on that basis denies those
18 allegations.

19 112. Lane lacks knowledge or information sufficient to form a belief as to
20 the truth of the allegations of Paragraph 112 and on that basis denies them.

21 113. Lane lacks knowledge or information sufficient to form a belief as to
22 the truth of the allegations of Paragraph 113 and on that basis denies them.

23 114. Lane admits that WesCorp invested in AAA-rated private label
24 MBS. Lane lacks knowledge or information sufficient to form a belief as to the
25 truth of the remaining allegations of Paragraph 114 and on that basis denies those
26 allegations.

27 /////

28 /////

The Risks of Option ARM MBS

115. Lane lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 115 and on that basis denies those allegations, except to the extent they reference the contents of WesCorp's corporate policies, which speak for themselves. Lane refers to WesCorp's corporate policies for their contents and denies any characterization inconsistent with their terms.

116. Lane admits that WesCorp purchased Option ARM MBS, but denies that they were a new security type. Lane lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 116 and on that basis denies those allegations.

117. Lane admits that WesCorp purchased Option ARM MBS with the approval of WesCorp's Board of Directors and the ALCO, but denies that they were a new security type. Lane lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 117 and on that basis denies those allegations.

118. Lane admits that, with the approval of WesCorp's Board of Directors and the ALCO, WesCorp purchased Option ARM MBS, but denies that they were a new security type. Lane lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 118 and on that basis denies those allegations.

119. Lane denies Option ARM MBS were a new type of security and denies the allegations of Paragraph 119.

120. Lane lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 120 and on that basis denies them.

121. Lane lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 121 and on that basis denies them.

1 122. Lane lacks information or knowledge sufficient to form a belief as to
2 the truth of the allegations of Paragraph 122 and on that basis denies them.

3 123. Lane lacks knowledge or information sufficient to form a belief as to
4 the truth of the allegations of Paragraph 123 and on that basis denies them.

5 124. Lane denies the allegations of Paragraph 124.

6 125. Lane lacks knowledge or information sufficient to form a belief as to
7 the truth of the allegations of Paragraph 125 and on that basis denies them.

8 126. Lane lacks information or knowledge sufficient to form a belief as to
9 the truth of the allegations of Paragraph 126 and on that basis denies them.

10 127. Paragraph 127 contains legal conclusions, to which no response is
11 required. To the extent the allegations require a response, they are denied.

12 128. Lane admits that WesCorp purchased AAA-rated and AA-rated
13 MBS, but denies that the Officer Defendants did not monitor concentrations of
14 Option ARM MBS. Lane lacks knowledge or information sufficient to form a
15 belief as to the truth of the remaining allegations of Paragraph 128 and on that
16 basis denies those allegations.

17 129. Lane denies that WesCorp was unaware of the concentrations of
18 MBS. Lane lacks information or knowledge sufficient to form a belief as to the
19 truth of the remaining allegations of Paragraph 129 and on that basis denies
20 them.

21 130. Lane lacks information or knowledge sufficient to form a belief as to
22 the truth of the allegations of Paragraph 130 and on that basis denies them.

23 131. Lane admits that the Officer Defendants and Directors were aware
24 that MBS investments contained risks. Lane lacks information or knowledge
25 sufficient to form a belief as to the truth of the remaining allegations of Paragraph
26 131 and on that basis denies them.

27 132. Lane admits that Burrell served as the officer in charge of the
28 Investment Department and the Chief Investment Officer and that Sidley served

1 as the officer in charge of the Investment Credit Services Department and as the
2 Chief Risk Officer. Paragraph 132 contains legal conclusions, to which no
3 response is required. To the extent these allegations require a response, they are
4 denied. Lane lacks knowledge or information sufficient to form a belief as to the
5 truth of the remaining allegations of Paragraph 132 and on that basis denies those
6 allegations.

7 133. Lane denies the allegations of Paragraph 133.

8 **The Risks in WesCorp's Portfolio**

9 134. Lane lacks information or knowledge sufficient to form a belief as to
10 the truth of the allegations of Paragraph 134 and on that basis denies them.

11 135. Lane admits that Officer Defendants and Directors attended ALCO
12 meetings at which there were presentations about the economy, investments and
13 WesCorp's investment strategy. Lane lacks information or knowledge sufficient
14 to form a belief as to the truth of the remaining allegations of Paragraph 135 and
15 on that basis denies those allegations.

16 136. Lane lacks information or knowledge sufficient to form a belief as to
17 the truth of the allegations of Paragraph 136 and on that basis denies them.

18 137. Lane admits that Officer Defendants and Directors attended ALCO
19 meetings at which there were presentations on interest rates and the housing
20 market. Lane lacks information or knowledge sufficient to form a belief as to the
21 truth of the remaining allegations of Paragraph 137 and on that basis denies those
22 allegations.

23 138. Lane lacks knowledge or information sufficient to form a belief as to
24 the truth of the allegations in Paragraph 138 and on that basis denies them,
25 except to the extent they reference the contents of WesCorp's ALCO books,
26 which speak for themselves. Lane refers to WesCorp's ALCO books for their
27 contents and denies any characterization inconsistent with its terms.
28

1 139. Lane lacks knowledge or information sufficient to form a belief as to
2 the truth of the allegations in Paragraph 139 and on that basis denies them,
3 except to the extent they reference the contents of WesCorp's ALCO books,
4 which speak for themselves. Lane refers to WesCorp's ALCO books for their
5 contents and denies any characterization inconsistent with its terms.

6 140. Lane lacks information or knowledge sufficient to form a belief as to
7 the truth of the allegations of Paragraph 140 and on that basis denies them.

8 141. Lane lacks knowledge or information sufficient to form a belief as to
9 the truth of the allegations in Paragraph 141 and on that basis denies them,
10 except to the extent they reference the contents of WesCorp's ALCO books,
11 which speak for themselves. Lane refers to WesCorp's ALCO books for their
12 contents and denies any characterization inconsistent with its terms.

13 142. Lane lacks knowledge or information sufficient to form a belief as to
14 the truth of the allegations in Paragraph 142 and on that basis denies them,
15 except to the extent they reference the contents of WesCorp's ALCO books,
16 which speak for themselves. Lane refers to WesCorp's ALCO books for their
17 contents and denies any characterization inconsistent with its terms.

18 143. Lane admits that WesCorp stopped purchasing AA-rated MBS, and
19 it continued to purchase AAA-rated MBS in 2007. Lane lacks information or
20 knowledge sufficient to form a belief as to the truth of the remaining allegations
21 of Paragraph 143 and on that basis denies those allegations.

22 144. Lane admits that WesCorp continued to purchase AAA-rated Option
23 ARM MBS in 2007 and that it stopped purchasing private label MBS in 2007.
24 Paragraph 144 contains legal conclusions, to which no response is required. To
25 the extent these allegations require a response, they are denied. Lane denies the
26 remaining allegations of Paragraph 144.

27 145. Paragraph 145 contains legal conclusions, to which no response is
28 required. To the extent the allegations require a response, they are denied.

1 146. Lane admits that WesCorp continued to purchase AAA-rated Option
2 ARM MBS in 2007 and that it stopped purchasing private label MBS in 2007.
3 Paragraph 146 contains legal conclusions, to which no response is required. To
4 the extent these allegations require a response, they are denied. Lane denies the
5 remaining allegations of Paragraph 146.

6 147. Lane lacks information or knowledge sufficient to form a belief as to
7 the truth of the allegations of Paragraph 147 and on that basis denies them,
8 except to the extent they reference the contents of the NCUA's regulations,
9 which speak for themselves. Lane refers to the NCUA's regulations for their
10 contents and denies any characterization inconsistent with their terms. Paragraph
11 147 also contains legal conclusions, to which no response is required. To the
12 extent these allegations require a response, they are denied.

13 **WesCorp's Collapse**

14 148. Lane lacks information or knowledge sufficient to form a belief as to
15 the truth of the allegations of Paragraph 148 and on that basis denies them.

16 149. Lane denies that the Officer Defendants or the Director Defendants
17 caused WesCorp's collapse. Lane lacks knowledge or information sufficient to
18 form a belief as to the truth of the remaining allegations of Paragraph 149 and on
19 that basis denies those allegations.

20 150. Lane lacks information or knowledge sufficient to form a belief as to
21 the truth of the allegations of Paragraph 150 and on that basis denies them.

22 151. Lane lacks information or knowledge sufficient to form a belief as to
23 the truth of the allegations of Paragraph 151 and on that basis denies them.

24 152. Lane lacks information or knowledge sufficient to form a belief as to
25 the truth of the allegations of Paragraph 152 and on that basis denies them.

26 153. Lane lacks information or knowledge sufficient to form a belief as to
27 the truth of the allegations of Paragraph 153 and on that basis denies them.

28 // // // //

The SERP Payments

154. Lane admits that in November 2001, WesCorp's Board of Directors authorized a Supplemental Retirement Plan (the "Executive SERP") for certain WesCorp executives. Lane lacks information or knowledge sufficient to form a belief as to the truth of the rest of the allegations of Paragraph 154 and on that basis denies them.

155. The allegations of Paragraph 155 reference the contents of documents relating to the Executive SERP, which speak for themselves. Lane refers to the documents comprising the Executive SERP for their contents and denies any characterization inconsistent with its terms.

156. Lane lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 156 and on that basis denies them.

157. Lane lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 157 and on that basis denies them.

158. Lane lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 158 and on that basis denies them.

159. Lane lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 159 and on that basis denies them.

160. Lane lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 160 and on that basis denies them.

161. Lane lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 161 and on that basis denies them.

162. Lane lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 162 and on that basis denies them.

163. Lane lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 163 and on that basis denies them.

164. Lane lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 164 and on that basis denies them.

1 165. Lane lacks information or knowledge sufficient to form a belief as to
2 the truth of the allegations of Paragraph 165 and on that basis denies them.

3 166. Lane lacks information or knowledge sufficient to form a belief as to
4 the truth of the allegations of Paragraph 166 and on that basis denies them.

5 167. Lane lacks information or knowledge sufficient to form a belief as to
6 the truth of the allegations of Paragraph 167 and on that basis denies them.

7 168. Lane lacks information or knowledge sufficient to form a belief as to
8 the truth of the allegations of Paragraph 168 and on that basis denies them.

9 169. Lane lacks information or knowledge sufficient to form a belief as to
10 the truth of the allegations of Paragraph 169 and on that basis denies them.

11 170. Lane lacks information or knowledge sufficient to form a belief as to
12 the truth of the allegations of Paragraph 170 and on that basis denies them.

13 171. Lane lacks information or knowledge sufficient to form a belief as to
14 the truth of the allegations of Paragraph 171 and on that basis denies them.

15 172. Lane lacks information or knowledge sufficient to form a belief as to
16 the truth of the allegations of Paragraph 172 and on that basis denies them.

17 173. Lane lacks information or knowledge sufficient to form a belief as to
18 the truth of the allegations of Paragraph 173 and on that basis denies them.

19 174. Lane lacks information or knowledge sufficient to form a belief as to
20 the truth of the allegations of Paragraph 174 and on that basis denies them.

21 175. Lane lacks information or knowledge sufficient to form a belief as to
22 the truth of the allegations of Paragraph 175 and on that basis denies them.

23 176. Lane lacks information or knowledge sufficient to form a belief as to
24 the truth of the allegations of Paragraph 176 and on that basis denies them.

25 177. Lane lacks information or knowledge sufficient to form a belief as to
26 the truth of the allegations of Paragraph 177 and on that basis denies them.

27 178. Lane lacks information or knowledge sufficient to form a belief as to
28 the truth of the allegations of Paragraph 178 and on that basis denies them.

1 179. Lane admits that he was a participant in the Executive SERP and that
2 under the Executive SERP, his expected retirement date as 2015. Lane denies
3 the remaining allegations of Paragraph 179.

4 180. Lane admits that he and Siravo executed an Early Payout Agreement,
5 which speaks for itself. Lane refers to the agreement for its contents and denies
6 any characterization inconsistent with its terms.

7 181. Lane denies the allegations in Paragraph 181.

8 182. Lane admits that he received payments in 2006, 2007 and 2008 for
9 the amounts set forth in Paragraph 182, in addition to his base compensation and
10 bonus, and that he left his employment with WesCorp on April 8, 2008. Lane
11 denies the rest of the allegations of Paragraph 182.

12 **First Claim for Relief**

13 **(Breach of Fiduciary Duties – Against the Officer Defendants)**

14 183. Lane incorporates by reference his responses to paragraphs 1 through
15 153 as though set forth in full.

16 184. Paragraph 184 contains legal conclusions, to which no response is
17 required. To the extent the allegations require a response, they are denied.

18 185. Paragraph 185 contains legal conclusions, to which no response is
19 required. To the extent the allegations require a response, they are denied.

20 186. Paragraph 186 contains legal conclusions, to which no response is
21 required. To the extent the allegations require a response, they are denied.

22 187. Paragraph 187 contains legal conclusions, to which no response is
23 required. To the extent the allegations require a response, they are denied.

24 188. Paragraph 188 contains legal conclusions, to which no response is
25 required. To the extent the allegations require a response, they are denied.

26 189. Paragraph 189 contains legal conclusions, to which no response is
27 required. To the extent the allegations require a response, they are denied.
28

1 190. Paragraph 190 contains legal conclusions, to which no response is
2 required. To the extent the allegations require a response, they are denied.

3 191. Paragraph 191 contains legal conclusions, to which no response is
4 required. To the extent the allegations require a response, they are denied.

5 192. Paragraph 192 contains legal conclusions, to which no response is
6 required. To the extent the allegations require a response, they are denied. Lane
7 denies that he breached any duties that he owed to WesCorp. Lane lacks
8 information or knowledge sufficient to form a belief as to the truth of the
9 remaining allegations of Paragraph 192 and on that basis denies those allegations.

10 193. Paragraph 193 contains legal conclusions, to which no response is
11 required. To the extent the allegations require a response, they are denied. Lane
12 denies that he breached any duties that he owed to WesCorp. Lane lacks
13 information or knowledge sufficient to form a belief as to the truth of the
14 remaining allegations of Paragraph 193 and on that basis denies those allegations.

15 194. Paragraph 194 contains legal conclusions, to which no response is
16 required. To the extent the allegations require a response, they are denied.

17 195. Paragraph 195 contains legal conclusions, to which no response is
18 required. To the extent the allegations require a response, they are denied. Lane
19 lacks information or knowledge sufficient to form a belief as to the truth of the
20 remaining allegations of Paragraph 195 and on that basis denies those allegations.

21 196. Paragraph 196 contains legal conclusions, to which no response is
22 required. To the extent the allegations require a response, they are denied. Lane
23 denies that he breached any duties that he owed to WesCorp. Lane lacks
24 information or knowledge sufficient to form a belief as to the truth of the
25 remaining allegations of Paragraph 196 and on that basis denies those allegations.

26 197. Paragraph 197 contains legal conclusions, to which no response is
27 required. To the extent the allegations require a response, Lane lacks information
28

1 or knowledge sufficient to form a belief as to the truth of the remaining
2 allegations of Paragraph 197 and on that basis denies those allegations.

3 198. Lane denies the allegations of Paragraph 198.

4 **Second Claim for Relief**

5 **(Breach of Fiduciary Duties – Against Defendants Rhamy, Updike, Dames,**
6 **Osberg, Longson and Harvey)**

7 199. Lane incorporates by reference his responses to paragraphs 1 through
8 153 as though set forth in full. Lane is not named as a defendant to this Claim
9 and accordingly no response is required to paragraphs 200 through 205. To the
10 extent the allegations require a response to paragraphs 200 through 205, Lane
11 lacks information or knowledge sufficient to form a belief as to the truth of the
12 allegations, and on that basis denies them.

13 200. Lane is not named as a defendant to this Claim and accordingly no
14 response is required.

15 201. Lane is not named as a defendant to this Claim and accordingly no
16 response is required.

17 202. Lane is not named as a defendant to this Claim and accordingly no
18 response is required.

19 203. Lane is not named as a defendant to this Claim and accordingly no
20 response is required.

21 204. Lane is not named as a defendant to this Claim and accordingly no
22 response is required.

23 205. Lane is not named as a defendant to this Claim and accordingly no
24 response is required.

25 // // // //

26 // // // //

27 // // // //

28 // // // //

Third Claim for Relief
(Breach of Fiduciary Duties – Against Defendants Jordan, Nakamura, Cheney, Rhamy, Kramer, Lentz, and Osberg)

206. Lane incorporates by reference his responses to paragraphs 1 through 153 as though set forth in full. Lane is not named as a defendant to this Claim and accordingly no response is required to paragraphs 207 through 212. To the extent the allegations require a response to paragraphs 207 through 212, Lane lacks information or knowledge sufficient to form a belief as to the truth of the allegations, and on that basis denies them.

207. Lane is not named as a defendant to this Claim and accordingly no response is required.

208. Lane is not named as a defendant to this Claim and accordingly no response is required.

209. Lane is not named as a defendant to this Claim and accordingly no response is required.

210. Lane is not named as a defendant to this Claim and accordingly no response is required.

211. Lane is not named as a defendant to this Claim and accordingly no response is required.

212. Lane is not named as a defendant to this Claim and accordingly no response is required.

Fourth Claim for Relief
(Breach of Fiduciary Duties – Against All Director Defendants)

213. Lane incorporates by reference his responses to paragraphs 1 through 153 as though set forth in full. Lane is not named as a defendant to this Claim and accordingly no response is required to paragraphs 214 through 220. To the extent the allegations require a response to paragraphs 214 through 220, Lane

1 lacks information or knowledge sufficient to form a belief as to the truth of the
2 allegations, and on that basis denies them.

3 214. Lane is not named as a defendant to this Claim and accordingly no
4 response is required.

5 215. Lane is not named as a defendant to this Claim and accordingly no
6 response is required.

7 216. Lane is not named as a defendant to this Claim and accordingly no
8 response is required.

9 217. Lane is not named as a defendant to this Claim and accordingly no
10 response is required.

11 218. Lane is not named as a defendant to this Claim and accordingly no
12 response is required.

13 219. Lane is not named as a defendant to this Claim and accordingly no
14 response is required.

15 220. Lane is not named as a defendant to this Claim and accordingly no
16 response is required.

17 **Fifth Claim for Relief**

18 **(Breach of Fiduciary Duty – Against Defendants Siravo and Swedberg)**

19 221. Lane incorporates by reference paragraphs 1 through 23 and 154
20 through 178 as though set forth in full. Lane is not named as a defendant to this
21 Claim and accordingly no response is required to paragraphs 222 through 226.
22 To the extent the allegations require a response to paragraphs 222 through 226,
23 Lane lacks information or knowledge sufficient to form a belief as to the truth of
24 the allegations, and on that basis denies them.

25 222. Lane is not named as a defendant to this Claim and accordingly no
26 response is required.

27 223. Lane is not named as a defendant to this Claim and accordingly no
28 response is required.

1 224. Lane is not named as a defendant to this Claim and accordingly no
2 response is required.

3 225. Lane is not named as a defendant to this Claim and accordingly no
4 response is required.

5 226. Lane is not named as a defendant to this Claim and accordingly no
6 response is required.

7 **Sixth Claim for Relief**

8 **(Fraud – Against Defendants Siravo and Swedberg)**

9 227. Lane incorporates by reference paragraphs 1 through 23 and 154
10 through 178 as though set forth in full. Lane is not named as a defendant to this
11 Claim and accordingly no response is required to paragraphs 228 through 234.
12 To the extent the allegations require a response to paragraphs 228 through 234,
13 Lane lacks information or knowledge sufficient to form a belief as to the truth of
14 the allegations, and on that basis denies them.

15 228. Lane is not named as a defendant to this Claim and accordingly no
16 response is required.

17 229. Lane is not named as a defendant to this Claim and accordingly no
18 response is required.

19 230. Lane is not named as a defendant to this Claim and accordingly no
20 response is required.

21 231. Lane is not named as a defendant to this Claim and accordingly no
22 response is required.

23 232. Lane is not named as a defendant to this Claim and accordingly no
24 response is required.

25 233. Lane is not named as a defendant to this Claim and accordingly no
26 response is required.

27 234. Lane is not named as a defendant to this Claim and accordingly no
28 response is required.

Seventh Claim for Relief

(Breach of Fiduciary Duty – Against Defendant Siravo)

235. Lane incorporates by reference paragraphs 1 through 23 and 154 through 178 as though set forth in full. Lane is not named as a defendant to this Claim and accordingly no response is required to paragraphs 236 through 239. To the extent the allegations require a response to paragraphs 236 through 239, Lane lacks information or knowledge sufficient to form a belief as to the truth of the allegations, and on that basis denies them, unless otherwise noted.

236. Lane is not named as a defendant to this Claim and accordingly no response is required.

237. Lane is not named as a defendant to this Claim and accordingly no response is required.

238. Lane denies the allegations in Paragraph 238.

239. Lane denies the allegations in Paragraph 239.

Eighth Claim for Relief

(Unjust Enrichment – Against Defendant Lane)

240. Lane incorporates by reference his responses to paragraphs 1 through 153, 179 through 182, as though set forth in full.

241. Lane denies the allegations of paragraph 241.

242. Lane denies the allegations of paragraph 242.

243. Lane admits that he received payments in 2006, 2007 and 2008 for the amounts set forth in Paragraph 243, in addition to his base compensation and bonus, and that he left his employment with WesCorp on April 8, 2008. Lane denies the rest of the allegations of Paragraph 243.

244. Lane denies the allegations of paragraph 244.

/////

/////

/////

Affirmative Defenses

First Affirmative Defense – Consent, Approval, Acquiescence, Participation, Ratification

245. The Second Amended Complaint, and each cause of action alleged therein against Lane, is barred, in whole or in part, because of NCUA's own consent approval, acquiescence, participation and/or ratification at any time in any activity that NCUA challenges as improper. In addition, the claims against Lane are barred because the acts stated were ratified or approved by other state and federal agencies or entities.

246. Lane is informed and believes and on that basis alleges that the NCUA affirmatively chose to give WesCorp the highest level of expanded investment authority given to any corporate credit union.

247. In particular but without limitation, the NCUA gave WesCorp authority to invest in securities rated by the ratings agencies as low as BBB. *See* 12 C.F.R. Part 704, Appx. B (Oct. 25, 2002). BBB is six levels below the lowest rated investment that WesCorp ever made (AA).

248. NCUA's Office of Corporate Credit Unions ("OCCU") provided supervision and oversight of WesCorp, including its investment strategies and risk assessment. This supervision was done, among other ways, through an on-site examiner who was physically located at WesCorp's facilities on a full-time basis, examining WesCorp's activities. The OCCU examiner's efforts resulted in yearly examination reports, analyzing and assessing WesCorp's operations, including but not limited to its investment strategies and risk assessment.

249. In addition, the NCUA's Office of Capital Markets ("OCM") provided assistance to NCUA's OCCU examiner by, among other things, helping to evaluate WesCorp's investments and related asset and liability issues.

250. As a result of NCUA's constant oversight and examination efforts, NCUA was, upon information and belief, at all times aware of WesCorp's

1 monitoring and risk-protection efforts and, upon further information and belief,
2 consistently approved of WesCorp's efforts. WesCorp's efforts which NCUA,
3 upon information and belief, knew of and approved of included, among other
4 things: (i) limiting investments to primarily high grade securities with AA and
5 AAA ratings; (ii) conducting thorough credit reviews or proposed security
6 purchases prior to purchasing; (iii) conducting credit reviews on newly-issued
7 security types; (iv) conducting annual credit reviews on existing securities; (v)
8 preparing monthly watch lists for, and keeping appropriate oversight of, securities
9 that were not performing well; (vi) creating concentration limits as to individual
10 issues; (vii) creating concentration limits as to different security types; and (viii)
11 publishing monthly reports on credit status and providing the WesCorp Board
12 with substantial information regarding concentration limits and credit
13 enhancement levels on WesCorp's security portfolios.

14 251. NCUA, through its oversight and examination efforts, was, upon
15 information and belief, also aware of the fact that Option ARM MBSs were not a
16 "new" security type that WesCorp began investing in. NCUA regulations and
17 WesCorp policies refer to "new" security types as those securities which have
18 different collateral than other securities. As NCUA was aware at all relevant
19 times, WesCorp had a long history of purchasing securities with the same type of
20 collateral – mortgages – as Option ARM MBSs. Upon information and belief,
21 NCUA and OCCU examiners ratified WesCorp's investment in Option ARM
22 MBSs and never suggested that Option ARM MBSs were a "new" security type
23 which WesCorp should review as such.

24 252. NCUA, though its OCCU examiners, the OCCU examination
25 reports and other efforts and statements, consistently approved of WesCorp's
26 investment strategies and investment concentrations, including WesCorp's
27 investments in Option ARM MBSs.

28

1 253. Prior to its involvement in this lawsuit, NCUA never made any
2 claims that WesCorp's investment strategies violated NCUA regulations or
3 WesCorp policies. Similarly, the OCCU examination reports never made such
4 suggestions.

5 254. NCUA at all times, upon information and belief, approved of
6 WesCorp's investment strategies, policies and procedures.

7 255. NCUA also, upon information and belief, approved of WesCorp's
8 risk assessment efforts. In those instances, to the extent there were any, where
9 NCUA, through the OCCU examination reports, raised any concerns regarding
10 WesCorp's risk assessment efforts, WesCorp promptly addressed those concerns
11 and NCUA subsequently, in later OCCU examination reports and/or through
12 other statements or actions, approved of WesCorp's efforts.

13 256. WesCorp in fact, upon information and belief, promptly addressed
14 any concerns raised by NCUA in an OCCU examination report and, upon
15 information and belief, obtained subsequent approval from NCUA of those
16 efforts.

17 257. In at least 2006 and 2007, after the investments at issue in NCUA's
18 complaint were made, NCUA continued to approve of WesCorp's management,
19 risk assessment and ability to operate within regulatory limits.

20 258. In light of the foregoing, NCUA knowingly ratified and approved of
21 the policies, strategies and actions which are now complained of in the Second
22 Amended Complaint.

23 **Second Affirmative Defense – Failure to State Claim**

24 259. The Second Amended Complaint fails to state facts sufficient to
25 constitute claims against Lane upon which relief can be granted.

26 **Third Affirmative Defense – Standing**

27 260. The NCUA lacks standing to assert the claims alleged in this action.
28

Fourth Affirmative Defense – Business Judgment Rule

261. The First and Seventh Claims for Relief are barred by the business judgment rule because Lane acted in good faith, acted in the best interests of WesCorp, and exercised the care that an ordinarily prudent person would have in similar circumstances.

Fifth Affirmative Defense – Comparative Negligence

262. The NCUA's recovery, if any, must be reduced to the extent that its injuries, losses and/or damages, if any, were caused by the NCUA's own negligence.

Sixth Affirmative Defense – Ratification

263. The NCUA's Claims are barred, in whole or in part, by the NCUA's knowledge, acquiescence, ratification, approval and oversight of WesCorp's investment strategies, risk asset efforts and purchase of MBS securities. In addition, Plaintiff had knowledge of the details of Lane's Executive Retention Program Early Payout Agreement, approved of it, and intended that Lane rely on this approval. Lane had and has no reason to believe the Agreement was improper and reasonably relied on Plaintiff's approval.

Seventh Affirmative Defense – Estoppel

264. The NCUA's Claims are barred, in whole or in part, by the doctrine of estoppel because, inter alia, WesCorp complied with the NCUA's regulations and directives and/or because WesCorp's investments were reviewed, accepted and approved by the NCUA and its examiners. In addition, Plaintiff had knowledge of the details of Lane's Executive Retention Program Early Payout Agreement, approved of it, and intended that Lane rely on this approval. Lane had and has no reason to believe the Agreement was improper and reasonably relied on Plaintiff's approval.

Eighth Affirmative Defense – Waiver

265. The NCUA's Claims are barred, in whole or in part, by the doctrine of waiver.

Ninth Affirmative Defense – Laches

266. The NCUA's Claims are barred, in whole or in part, by the doctrine of laches.

267. Plaintiff had knowledge of Lane's Executive Retention Program Early Payout Agreement for at least four years and 210 days before bringing its Sixth Claim for Relief. Plaintiff's delay was unreasonable and without justification. Lane has been prejudiced by this delay by, in addition to other factors, allowing evidence to defend against this claim to spoil.

Tenth Affirmative Defense – Statute of Limitations

268. The NCUA's Claims are barred, in whole or in part, by the applicable statute(s) of limitations.

Eleventh Affirmative Defense – Intervening Cause

269. The NCUA's Claims are barred, in whole or in part, because WesCorp's losses, if any, were the result of one or more intervening causes, or were caused by the acts and/or failures of other persons and/or entities, including but not limited to the NCUA, rating agencies, underwriters, brokers, issuers, auditors, investment bankers, financial advisors, and counsel.

Twelfth Affirmative Defense – Superseding Cause

270. The NCUA's Claims are barred, in whole or in part, because the acts and conduct of Lane, including but not limited to the purchases of securities and amendments of, and/or changes, to the Supplemental Executive Retention Programs were approved and/or ratified by WesCorp's Board of Directors, Executive Committee, individual directors, and/or the Asset Liability Committee.

Thirteenth Affirmative Defense – No causation

271. The NCUA's Claims are barred, in whole or in part, because Lane did not directly or indirectly cause the alleged damages complained of in the Second Amended Complaint.

Fourteenth Affirmative Defense – Reliance on others

272. The NCUA's Claims are barred, in whole or in part, because the acts or omissions of Lane were made or occurred in reasonable good faith reliance on the statements and representations of others upon which they was entitled to rely, including but not limited to NCUA personnel and examiners, rating agencies, underwriters, brokers, issuers, auditors, investment bankers, financial advisors, and counsel.

Fifteenth Affirmative Defense – Apportionment

273. Any damages that the NCUA may have suffered should be apportioned according to the relative degrees of fault of other persons and/or entities responsible for the NCUA's damages, and any alleged liability of Lane should be reduced accordingly.

Sixteenth Affirmative Defense – Lack of Injury

274. The NCUA's Claims are barred, in whole or in part, because the NCUA has not suffered any legally cognizable injury or damage.

Seventeenth Affirmative Defense – No Entitlement to Exemplary or Punitive Damages

275. NCUA is precluded from recovering exemplary or punitive damages, either in whole or in part, under the applicable provisions of the law, including, without limitation, California Civil Code section 3294, the United States Constitution and/or the California Constitution.

Eighteenth Affirmative Defense – Accord and Satisfaction

276. The NCUA's Eighth Claim for Relief is barred by accord and satisfaction.

1 **Nineteenth Affirmative Defense – Right to Assert Additional Affirmative**
2 **Defenses**

3 277. Lane presently has insufficient knowledge or information on which to
4 form a belief as to whether there may be additional, as yet unstated, affirmative
5 defenses available. Thus, subject to discovery in this action, Lane expressly
6 reserves his right to assert additional affirmative defenses.

7 **Counterclaims**

8 For counterclaims, Lane alleges:

9 **Jurisdiction**

10 278. The Court has supplemental jurisdiction over these counterclaims
11 under 28 U.S.C. § 1367(a), because these counterclaims and the purported claims
12 alleged by the NCUA all form part of the same case or controversy concerning
13 the parties' rights and responsibilities related to Lane service as an officer and
14 employee of WesCorp.

15 **Parties**

16 279. Lane served as CFO of WesCorp from March 9, 1998 to April 18,
17 2008.

18 280. Counter-defendant National Credit Union Administration Board as
19 Liquidator of Western Corporate Federal Credit Union ("NCUA") is the
20 liquidating agent of WesCorp.

21 **Factual Allegations**

22 **Policy 21**

23 281. WesCorp's Board of Directors adopted a resolution regarding
24 indemnification and insurance, codified in WesCorp's book of policies as "Policy
25 21."

26 282. WesCorp agreed in Policy 21 to indemnify WesCorp's current and
27 former "officials" and "employees" "to the maximum extent permitted by either
28 the laws of the state of California or the Model Business Corporation Act" (the

1 “MBCA”) “for any liability asserted against them in connection with judicial or
2 administrative proceedings, formal or informal, to which they are or may become
3 parties by reason of the performance of their official duties.”

4 283. WesCorp also agreed in Policy 21 that the indemnification “shall
5 include the recovery of reasonable costs and attorneys fees incurred by an
6 individual so indemnified if such individual is required to engage the services of
7 any attorney. . . to secure the indemnity provided herein.”

8 284. WesCorp also agreed in Policy 21 to “purchase and maintain
9 insurance” on behalf of current and former officials and employees “against any
10 liability asserted against them and expenses reasonably incurred by them in their
11 official capacities and arising out of the performance of their official duties to the
12 extent such insurance is permitted by the applicable state law or the Model
13 Business Corporation Act[.]”

14 **NCUA’s Denial of Advancement**

15 285. On January 7, 2011, Lane submitted a request to the NCUA as
16 Liquidating Agent for WesCorp for reimbursement of past defense costs incurred
17 in defending this litigation, advancement of any future defense costs of any future
18 defense costs that he might incur, and indemnification for any costs he incurs in
19 establishing his right to indemnity. Lane supplemented his request to the
20 Liquidating Agent on February 2, 2011.

21 286. The Liquidating Agent has not made a decision after 180 days related
22 to the indemnification requests of Lane and therefore has denied these claims.

23 287. All of the claims asserted by the NCUA against Lane in this litigation
24 “arise out of the performance of his official duties” as officers and employees of
25 WesCorp.

26 288. Lane has incurred, and continues to incur, attorney’s fees and costs in
27 connection with the defense of the claims asserted by the NCUA as Liquidating
28 Agent for WesCorp in this litigation.

First Counterclaim

(Advancement of Litigation Costs Under Policy 21)

289. Lane incorporates by reference and re-alleges each and every allegation contained in paragraphs 281 to 288 as though fully set forth herein.

290. WesCorp agreed in Policy 21 to indemnify Lane “to the maximum extent permitted by either” California law *or* the MBCA.

291. The MBCA provides that a corporation must advance defense costs if the corporation has promised by resolution or otherwise indemnification “to the fullest extent permitted by law,” as WesCorp did in Policy 21. MBCA §8.58 expressly states that any such resolution “shall be deemed to *obligate* the corporation to *advance* funds to pay for or reimburse” the defense costs before final disposition of the case. (emphasis added).

292. Lane will provide to the NCUA as liquidator of WesCorp the written affirmation and undertaking required for advancement attorneys fees by MBCA §8.53. Lane will provide a written affirmation that he in good faith believes that he has met the relevant standard of conduct in MBCA §8.51 required for indemnification: that he conducted himself in good faith and in what he reasonably believed was in the best interests of WesCorp. Lane will also provide a written undertaking to repay any advanced funds if it is ultimately determined that he is not entitled to mandatory indemnification or that he did not meet the standard of conduct under section 8.51.

293. NCUA as liquidator of WesCorp is obligated to advance to Lane defense costs incurred in this litigation under the provisions of the MBCA that are adopted in Policy 21.

294. The NCUA has failed to advance Lane his defense costs incurred in this litigation.

1 295. Lane has incurred damages as a result of the NCUA's failure to
2 advance his defense costs incurred in this litigation in an amount to be proven at
3 trial, and in excess of \$100,000.

4 **Second Counterclaim**

5 **(Indemnification under California Labor Code 2802)**

6 296. Lane incorporates by reference and re-alleges each and every
7 allegation contained in paragraphs 281 to 295 as though fully set forth herein.

8 297. At all relevant times, Lane was an employee of WesCorp.

9 298. California Labor Code Section 2802 provides that an employer "shall
10 indemnify his or her employee for all necessary expenditures or losses incurred by
11 the employee in direct consequence of the discharge of his or her duties[.]"

12 299. NCUA as liquidator of WesCorp is obligated to indemnify and
13 reimburse Lane for his defense costs as they are incurred in this litigation under
14 the California Labor Code Section 2802.

15 300. Lane has incurred and paid attorneys fees and costs in defense of the
16 claims asserted by NCUA as liquidator of WesCorp in this litigation.

17 301. The NCUA has failed to reimburse Lane for the attorney's fees and
18 costs he has paid to date.

19 302. Lane has incurred damages as a result of the NCUA's failure to
20 reimburse him for his attorney fees and costs in an amount to be proven at trial,
21 in excess of \$100,000.

22 **Third Counterclaim**

23 **(Indemnification under Policy 21)**

24 303. Lane incorporates by reference and re-alleges each and every
25 allegation contained in paragraphs 281 to 302 as though fully set forth herein.

26 304. WesCorp agreed in Policy 21 to indemnify Lane "to the maximum
27 extent permitted by either" California law *or* the MBCA.
28

1 305. Lane demands indemnity under Policy 21 to the fullest extent
2 permissible under either California law or the MBCA and/or defense costs to the
3 fullest extent permissible under either California law or the MBCA.

4 306. Lane also demands recovery of costs and attorneys fees incurred to
5 secure the indemnity provided for in Policy 21.

6 307. If NCUA refuses to indemnify Lane pursuant to Policy 21, they will
7 suffer damages in an amount to be determined.

8 **Fourth Counterclaim**
9 **(Declaratory Relief)**

10 308. Lane incorporates by reference and re-alleges each and every
11 allegation contained in paragraphs 281 to 307 as though fully set forth herein.

12 309. The NCUA is obligated to advance to Lane his attorney's fees and
13 costs incurred in defense of this litigation under Policy 21, the MBCA, and
14 California Labor Code Section 2802.

15 310. The NCUA has failed to respond to Lane's request for advancement
16 of his attorney's fees and costs incurred in defense of this litigation.

17 311. The rights of the parties with respect to the advancement of attorney's
18 fees and costs incurred in defense of this litigation can be determined only by
19 declaratory relief.

20 **Fifth Counterclaim**
21 **(Declaratory Relief)**

22 312. WesCorp promised in Policy 21 to "purchase and maintain" insurance
23 "against any liability asserted against" current and former officials and employees.

24 313. The Policy that WesCorp purchased was inadequate to fulfill this
25 promise.

26 314. WesCorp purchased an insurance policy from CUMIS Insurance
27 Society, which has taken the position that the claims asserted against Lane in this
28 action are excluded from coverage under the insurance policy.

1 inadequate insurance policy purchased by WesCorp in breach of its
2 promise to purchase and maintain insurance under Policy 21.

3 6. That Lane be awarded his costs and reasonable attorneys' fees.

4 7. That Lane be granted such other and further relief as the Court may
5 deem just and proper.

6 **Jury Demand**

7 Todd M. Lane hereby demands a trial by jury for all issues so triable.
8
9

10 DATED: September 14, 2011

CHAPIN FITZGERALD SULLIVAN & BOTTINI LLP

11
12 By: 

Kenneth M. Fitzgerald, Esq.

Curtis G. Carll, Esq.

Attorneys for Defendant

Todd M. Lane
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28